FARAD CONTINUATION SHEET.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

CIVIL APPLICATION NO.3290 OF 2006.
IN A.O.NO.43 OF 2006.

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not been handed over to defendant no.1 and if possession is handed over, the defendnt no.1 may convert the land into non-agricultural land and sale the plots which would create some complication. Plaintiffs on this ground prayed for temporary injunction before the trial court.

3. The defendant no.1 had filed reply to the injunction application and had resisted the application. Defendant no.1 submits that the sale-deed has been executed by defendant no.2 in favour of the defendant no.1 on the basis of the power of attorney held by him. Defendant no.1 has been put in possession of the suit property on the basis of the sale-deed. Defendant no.1 has demarcated the plots and has even sold those plots to the several other persons. No fraud was played on plaintiff no.5. Defendant no.2 also has denied the allegations that any fraud was played. He submits that the plaintiff had executed a power of attorney in his favour, since he was closely associated with the family of the plaintiffs. Since the plaintiffs no.1 to 4 were very busy, power of attorney was executed in favour of defendant no.2.

3. The learned judge of the lower court found that there was no prima facie case in favour of the plaintiffs and the balance of convenience does not lie

in favour of the plaintiffs and plaintiffs will not suffer any irreparable loss. Holding so, he rejected the application for temporary injunction.

4. The plaintiff is seeking ad interim injunction pending decision of appeal against the order. The court has to look into the prima facie case, the balance of convenience as well as the irreparable loss.

5. The learned counsel for the plaintiff/appellant contended that plaintiff is old illiterate lady and power of attorney has been obtained from her by practicing fraud on her. It may be noted here that the allegations in plaint do not disclose that at the time of execution of power of attorney any fraud was played. Even otherwise, no particulars of the fraud have been given. Prima facie, therefore, the contention that any fraud was played on plaintiff no.5 has to be negatived. On the other hand, it may be noted that in paragraph 3 of the plaint, it is mentioned by the plaintiff that her husband – defendant no.3 was along with her when the agreement of sale was executed. It is, therefore, obvious that it is not that plaintiff was all alone and the document was fraudulently obtained from her. Her husband was very much with her and with his consent the agreement was executed and even sale-

deed appears to have been executed.

6. It was fairly conceded by the learned counsel for the plaintiffs that as yet the Power of Attorney has not been revoked. The plaintiff has not even sought relief of declaration that the power of attorney was obtained fraudulently. The power of attorney, therefore, is perfectly valid even as on today. Therefore, if defendant no.2 – holder of the power of attorney – has executed the sale deed in favour of defendant no.1, the sale deed was prima facie perfect and valid

7. There is recital in the sale deed that the possession was handed over to defendant no.1. If a holder of power of attorney hands over the possession, such handing over of possession is also valid. It is mentioned by defendant no.1 in the written statement that after receipt of the possession lay-out has been prepared and plots have already been sold to several defendants. The sale deed was executed in the year 2000 and the suit has been filed in the year 2005. It is apparent from the contents of the injunction application that the plaintiff had come to know the mutation of name of defendant no.1 in the year 2000 itself. The suit was filed after five years. There is no explanation for this delay in filing the suit. Injunction is an equitable relief and a person

who sleeps over his rights is not entitled to equitable relief. In the result, I find that the plaintiff/appellant has not made out any prima facie case. The possession has been already handed over to defendant no.1 and he sold the plots to several persons. There is no whisper in the plaint that the consideration has not been received. The balance of convenience must lie in favour of defendant no.1 and 2. It would be the defendant and the purchaser who would suffer irqreparable loss inspite of payment of full consideration if injunction is granted. As a result, the plaintiff /appellant is not entitled to ad interim injunction as prayed for. The application stands rejected.

JUDGE

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